

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Present :

The Hon'ble Justice Surinder Singh Nijjar, Chief Justice

And

The Hon'ble Justice Dipankar Datta

M.A.T. No. 275 of 2008
University of Calcutta & ors.
...Appellants

Vs.
Pritam Rooj
...Respondent
with

W.P. No.208 of 2008
Biswapati Das
Vs.
West Bengal Board of Secondary Education & ors.
with

W.P. No.5302 (W) of 2008
West Bengal Board of Secondary Education & ors.
Vs.
The Chief Information Commissioner, West
Bengal Information Commission & ors.
with

W.P. No.5743 (W) of 2008
West Bengal Board of Secondary Education & ors.
Vs.
The Chief Information Commissioner, West
Bengal Information Commission & ors.

with

W.P. No.5744 (W) of 2008
West Bengal Board of Secondary Education & ors.
Vs.
The Chief Information Commissioner, West
Bengal Information Commission & ors.

with

W.P. No. 18189 (W) of 2008
Aditya Bandopadhyay
Vs.
Central Board of Secondary Education & ors.

For Appellants : Dr. Sambuddha Chakraborty
Dr. Sutanu Kumar Patra
Mr. Rajib Kumar Basak

For Respondent no.1 : Mr. Satadal Chatterjee
[in M.A.T. No.275 of 2008]

For the State : Mr. Tapas Majumder
[in M.A.T. No.275 of 2008]

For Petitioners : Mr. Anindya Kumar Mitra
[in W.P. Nos. 5302 (W) and Mr. L.K. Gupta
5743-44 (W) of 2008] Mr. Kallol Bose
Mr. D. Sarkar

For the State : Ms. Sima Sengupta
[in W.P. Nos. 5302 (W) of 2008] Ms. Susmita Biswas

For Petitioner : Mr. Jayanta Kumar Mitra
[in W.P. No.208 of 2008] Mr. A.K. Dhandhanias

For Petitioner : Mr. Shyamal Das
[in W.P. No.18189 (W) of 2008] Ms. B. Bhattacharjee

For the Respondents : Mr. U.S. Menon
[in W.P. No.18189 (W) of 2008]

For the Information : Mr. R.N. Chakraborty
Commission

Heard on : August 18, 19, 20, 21, 25, 26 & 27, 2008

Judgment on : February 5, 2009

Dipankar Datta, J :

The broad issues raised in the writ petitions, registered as W.P. Nos. 208, 5302 (W), 5743 (W), 5744 (W) and 18189 (W), all of 2008, being identical to the issue involved in MAT No. 275 of 2008, a learned Single Judge of this Court by diverse orders have referred the same to the Division Bench for analogous hearing. The writ petitions have since been heard along with the writ appeal referred to above and all the proceedings shall stand concluded by this common judgment.

The facts of each case may now be noticed.

In the writ appeal preferred by the University of Calcutta (hereafter the

University) and its officers, judgment and order dated 28.3.2008 passed by a learned Single Judge of this Court allowing W.P. No.22176 (W) of 2007 is the subject matter of challenge. The facts giving rise to the writ petition is that the petitioner, Pritam Rooj (hereafter Pritam) had taken the B.Sc. Part II (Three Year Honours) Examination, 2007 conducted by the University. Although Pritam was successful in clearing the examination, he was dissatisfied with the marks awarded to him in respect of Papers V and VI. He obtained 28 and 36 marks respectively out of a maximum 100. In terms of the regulations framed by the University, he applied for review of his answer scripts in respect of the aforesaid two papers. On revaluation, his marks in Paper V increased by 4 marks while there was no change in Paper VI. On or about 14.8.2007, he had made an application under the Right to Information Act, 2005 (hereafter the RTI Act) seeking inspection of his answer scripts. That application was turned down by the Registrar of the University, who is also its Public Information Officer in terms of the RTI Act, by a letter dated 17.9.2007 which reads as follows:

“ In response to your above application I am to inform you that it has been decided that henceforth no inspection of any answer script of any examination conducted by the University shall be allowed to any applicant under the Right To Information Act, 2005.”

Feeling aggrieved by the said order, Pritam preferred the writ petition seeking production of the answer scripts before the Hon'ble Court for revaluation/reexamination by an expert examiner as also for withdrawal/recalling of the order of rejection dated 17.9.2007. The petition was contested by the University. On hearing the parties, the writ petition was allowed

by the learned Single Judge by an elaborate judgment dated 28.3.2008 (since reported in AIR 2008 Cal 118). The operative part of the order reads as follows:

“90. As much as an examining body may owe an obligation to its set of examiners, it owes a greater fiduciary duty to its examinees. The examinees are at the heart of a system to cater to whom is brought the examining body and its examiners. If it is the right of a voter, for the little man to have the curriculum vitae of the candidates who seek his insignificant vote, the right of the examinee is no less to seek inspection of his answerscript.

91. Whether it is on the anvil of the legal holy trinity of justice, equity and good conscience, or on the test of openness and transparency being inherent in human rights, or by the myriad tools of construction, or even by the Wednesbury yardstick of reasonableness, the State Public Information Officer’s rejection of the writ petitioner’s request to obtain his answerscript cannot be sustained. The University will proceed to immediately offer inspection of the paper that the petitioner seeks. A Writ of Mandamus in that regard must issue. The order of September 17, 2007 is set aside.”

The petitioner in W.P. No.208 of 2008 is the father of an examinee who had appeared in the Madhyamik Examination, 2007 conducted by the West Bengal Board of Secondary Education (hereafter the WBBSE). The examinee concerned secured first division but due to shortage of 4 (four) marks only, he fell short of 75% marks in the aggregate which would have enabled him to the award of a ‘star’. The examinee obtained 59, 73 and 50 marks in the English, Physical Science and History papers respectively out of a maximum 100 and felt aggrieved.

The petitioner had then filed an application under Section 6 of the RTI Act on 22.6.2007 seeking inspection of answer scripts. By an order dated 26.7.2007, the Deputy Secretary (Examination) of the WBBSE being its Public Information Officer turned down the request. An appeal was preferred thereagainst which was allowed on 7.9.2007 by the Appellate Authority being the Joint Secretary, School

Education Department, Government of West Bengal. The Appellate Authority directed the Public Information Officer of the WBBSE to allow inspection of the scripts as applied for by the petitioner vide his application dated 22.6.2007 within 10 days of receipt of such order after realizing fees as per provisions of Rule 4 of the West Bengal Right to Information Rules, 2006. In the result, the order impugned dated 26.7.2007 was set aside.

The order of the Appellate Authority was not complied with by the WBBSE which resulted in filing of the writ petition claiming an order on the WBBSE to grant inspection of the answer scripts to the petitioner and to his son written by him in respect of English, Physical Science and History papers in compliance with the appellate order together with a direction for re-examination of such scripts.

The aforesaid order of the appellate authority dated 7.9.2007 is the subject matter of challenge in the writ petition filed by the WBBSE being W.P. No.5302 (W) of 2008. The WBBSE has prayed for quashing of such appellate order on various grounds urged in the petition.

W.P. Nos. 5743 (W) and 5744 (W) of 2008 filed by the WBBSE are directed against similar orders passed by the appellate authority, both dated 4.1.2008, whereby the orders of its Public Information Officer rejecting the applications under Section 6 of the RTI Act of the respective examinees' father were quashed and directions were issued to the WBBSE to allow inspection of the scripts as prayed for in the respective applications.

W.P. No.18189 (W) of 2008 is directed against an order dated 12.7.2008 of

the Public Information Officer of the Central Board of Secondary Education (hereafter the CBSE). By the said order, the request of the mother of the examinee/petitioner for inspection of her son's answer scripts pertaining to Secondary School Examination, 2008 conducted by the CBSE was rejected in the following words:

- "1. The information asked for cannot be supplied due to following reasons:*
- (i) The Information asked by you is exempted under Section 8(1)(e) since CBSE shares fiduciary relationship with its evaluators and maintain confidentiality of both manner and method of evaluation.*
 - (ii) Further, the Examination Bye-laws of the Board also provide that no candidate shall claim or entitled, revaluation of his/her answers or disclosure or inspection of answer book(s) or other documents.*
 - (iii) The larger public interest does not warrant the disclosure of such information desired by you.*
 - (iv) Central Information Commission on appeal no.ICPB/A-3/CIC/2006 dated 10.02.2006 and judgment dated 23.04.2007 has also ruled out such disclosure (Copy containing extract of judgment dated 23.04.2007 enclosed).*

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Mr. Anindya Kumar Mitra, learned senior counsel appearing for the WBBSE argued at length. He, however, did not press the writ petitions filed by the WBBSE on all the grounds urged therein. His submissions are noted hereunder.

He referred to the definition of 'information' and 'right to information', appearing in Section 2(f) and 2(j) of the RTI Act to contend that the inclusive definition of 'information' under Section 2(f) is restricted by the provision contained in Section 2(j) in the manner that 'information' should have to be an information accessible under the RTI Act, and if such an information is accessible under the RTI Act, then only the incidental/explanatory/inclusive part

of Section 2(j) would come into operation. According to him, right to information under the RTI Act is confined to public domain and answer scripts written by an examinee is relatable to private/personal information which is not guaranteed as incidental to the right of freedom of speech protected by Article 19(1)(a) of the Constitution. Article 19(2) of the Constitution empowers imposition of reasonable restrictions on the right conferred by Article 19(1)(a) by law and the WBBSE having framed regulations in terms of power conferred by the West Bengal Board of Secondary Education Act, 1963 (hereafter the 1963 Act) having the force of law, which denies the examinees access to answer scripts written by them, any order directing inspection of such scripts by the examinees on construing answer scripts to be 'information' as defined in the RTI Act would offend Regulation 14(4) of the West Bengal Board of Secondary (Examination) Regulations, 2001 (hereafter the said Regulations). Since the said Regulations have not been subjected to challenge by any of the examinees, they cannot have access to answer scripts so long the said Regulations govern the field. He also referred to Regulation 14(1) and (2) of the said Regulations to contend that an aggrieved examinee is entitled to have his answer scripts reviewed/scrutinized and, therefore, interests of an examinee are adequately protected by the subordinate legislation framed under the 1963 Act.

Next, he referred to Section 4 of the RTI Act and contended that the learned Judge while allowing the writ petition of Pritam did not have the occasion to consider the provisions contained therein. According to him, Section 4 deals with the substantive form of 'information' and provides for the obligations to be

performed by public authorities. If answer scripts come within the purview of definition of the word 'records' under Section 2(i) of the RTI Act, a duty is cast upon each and every public authority (which would necessarily include the WBBSE) under clause (a) of Section 4(1) to catalogue and index the same in a manner and form which would facilitate the right to obtain information under the RTI Act. Unfortunately, it is not possible to catalogue and index the answer scripts written by examinees taking Madhyamik Pariksha conducted by the WBBSE in the manner and form which would facilitate the right to information under the RTI Act, particularly keeping in view the volume of answer scripts the WBBSE is required to handle each year. Supplementary affidavits filed by the WBBSE were referred to for demonstrating the magnitude of the nature of duties and functions which the WBBSE is obliged to discharge and perform while conducting Madhyamik Pariksha. That apart, he contended that if such huge volume of answer scripts have to be retained for the mandatory period of 20 years as required under Section 8(3) of the RTI Act, the same would reach unmanageable limits and it would be absolutely impracticable for the WBBSE to carry out its functions.

Referring to Section 4(1)(b) of the RTI Act as well as sub-sections (2), (3) and (4) of Section 4, he submitted that answer scripts of examinees are incapable of being published or updated every year and it is also not possible to widely publish and disseminate the information and, therefore, answer scripts do not come within the ambit of the term 'information' under the RTI Act. According to him, the term 'information' under the RTI Act should be interpreted to mean

information which can be widely published under Section 4(2) and could be disseminated under Section 4(3) of the RTI Act.

He further contended that legislative intent of a statute cannot be interpreted to lead to any absurdity and/or impracticability and hence having regard to the decisions of the Apex Court reported in AIR 1986 SC 137 : American Home Products Corporation vs. Mac Laboratories Pvt. Ltd. & anr., AIR 1986 SC 1499 : M/s. Girdhari Lal and sons vs. Balbir Nath Mathur & ors., and (2004) 6 SCC 626 : Lalit Mohan Pandey vs. Puran Singh & ors., the RTI Act ought to be interpreted in a manner that the term 'information' defined therein does not include answer scripts of examinees taking a public examination within its ambit. He urged the Court to interpret the provisions of the RTI Act in a reasonable and rational manner to obviate any absurdity and/or impracticability arising out of working of the provisions of the RTI Act.

He strenuously urged the Court to hold that the definition of 'information', 'records' and 'right to information' appearing in Section 2(f), (i) and (j) respectively of the RTI Act read with Sections 3 and 4 thereof, construed and interpreted in the light of the preamble and the objects of the RTI Act, lead to interpretation thereof which would enable furnishing of information from records in public domain for public interest and since answer scripts do not have the element of 'public domain' or 'public interest' attached with it, the same should not be construed to be included within the purview of the RTI Act.

He accordingly prayed for relief as claimed by WBBSE in its petitions and dismissal of W.P. No. 208 of 2008.

Dr. Chakraborty, learned counsel representing the University in the writ appeal placed the impugned judgment of the learned Judge dated 28.03.2008 in its entirety. Referring to the concessions purported to have made by him as recorded in the judgment under appeal, he contended that he had not conceded on any point and the learned Judge erred in so recording. According to him, the RTI Act has merely streamlined the procedure and laid down the modalities for furnishing of information. What was not there earlier, the RTI Act did not create anything new. He contended that it is too late in the day to doubt that the RTI Act seeks to give access to citizens who would like to have information regarding functioning of public authorities. He relied on its preamble to emphasize the purpose for which the RTI Act was enacted. He urged that information which could be gathered from an assessed answer script would not be vital for the functioning of the Government or for good governance of the country as well as to preserve democracy and, therefore, inspection of answer scripts by an examinee was not in contemplation of the Parliament at the time of enacting the RTI Act. Exercise of democratic rights of citizens in tune with Article 19 of the Constitution does not guarantee a student the right to inspect his own answer script. Under Article 19(1)(a) of the Constitution, an examinee has no right to examine his answer scripts and, therefore, the RTI Act also does not contemplate such right. He reiterated before the Court that the University would generously give limited information to the examinees by letting them know the particulars of marks obtained by them in respect of each of the questions answered by them without giving access to the entire answer scripts and that would obviate the

need of opening answer scripts of students to inspection which is also not the object of the RTI Act.

He referred to the decision reported in AIR 1984 SC 1543 : Maharashtra State Board of Secondary and Higher Secondary Education and ano. Vs. Paritosh Bhupesh Kumarsheth, etc. for the propositions that finality ought to be attached to the results of public examinations, that an examinee has no right to inspect his answer script, that principles of natural justice have no application in such cases and that any drawbacks in the policy incorporated in rules/regulations framed by examining bodies would not render the same ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one and not really intended to effectuate the purposes of the Act. He also relied on the decision reported in 2007(1) SCC 603 : President, Board of Secondary Education, Orissa and ano. Vs. D. Suvankar for the proposition that interference of Courts in academic matters is limited and is called for only if there be compelling circumstances or apparent infirmity in evaluation.

On the basis of the above submissions, he appealed to the Court to set aside the impugned judgment.

Mr. Menon, learned counsel for the CBSE adopted the submissions advanced on behalf of the WBBSE and the University and as such did not advance oral arguments. He, however, requested us to consider the written notes of arguments filed by him.

Mr. Jayanta Kumar Mitra, learned senior counsel while appearing in

support of W.P. No. 208 of 2008 opposed the connected writ petition filed by the WBBSE being W.P. No. 5302 (W) of 2008. He referred to the preamble of the Constitution to emphasize that it seeks to secure liberty of thought and expression. Next, he referred to Article 19(1)(a) of the Constitution and submitted that in terms of the decision of the Apex Court reported in AIR 1975 SC 865 : The State of Uttar Pradesh vs Raj Narain and ors., a citizen of a country has the right to know every public act and for that matter everything done in a public way by public functionaries. According to him, the right to information was available much before the RTI Act came into force and it only provides the machinery for making information available. By relying on the decision reported in AIR 1982 SC 149 : S.P. Gupta vs. Union of India, he contended that disclosure of information in regard to functioning of Government must be the rule and secrecy an exception. The concept of public interest inheres in furnishing information as sought for by a citizen. There has been a constant demand for openness and transparency in the Government's functioning and a positive participation of the people is necessary for a democratic state. It is healthy to have suspicion and it is for the Government to establish that any and every action taken by it is in public interest and, therefore, there is nothing to hide. Secrecy is an exception for which there must be a justification. Disclosures serve an important aspect of public interest. The RTI Act is not to be read in a manner to curtail rights which the Constitution recognizes for the RTI Act does not say anything contrary to what the Constitution and the rules say. If the information sought for is withheld for no good reason, it would be reasonable to suspect that there is something under

the table which is sought to be hidden. He referred to paragraphs 16, 17 and 18 in W.P. 5302 (W) of 2008 to contend that although the WBBSE has claimed exemption in terms of provisions contained in Section 8(1) of the RTI Act, such point was not argued on its behalf which clearly shows that it is itself not sure under which specific provision access to answer scripts may be withheld.

He then referred to the decisions reported in AIR 1986 SC 515 : Indian Express Newspapers (Bombay) Private Ltd. and ors vs. Union of India and ors., (1995) 2 SCC 161 : Secretary, Ministry of Information and Broadcasting, Govt. of India and ors. vs. Cricket Association of Bengal and ors., (2002) 5 SCC 294 : Union of India vs. Association for Democratic Reforms and ano., (2004) 2 SCC 476 : People's Union for Civil Liberties and ano. Vs. Union of India 7 ors., AIR 2003 Del 103 : Ozair Husain vs. Union of India and ano. and AIR 2005 Bom 145 : F.A. Picture International vs. Central Board of Film Certification, Mumbai and ano. to drive home the point that right to information has always been considered an integral part of the right guaranteed under Article 19(1)(a) of the Constitution.

While praying for dismissal of the writ petition filed by the WBBSE, he prayed for relief as claimed in the writ petition filed by the concerned examinee's father.

Mr. Chatterjee, learned Counsel, representing Pritam contended that the RTI Act is meant to serve two fold purposes, viz. (i) effectuating the right to know already enshrined in Article 19(1)(a) of the Constitution; and (ii) greater access to information in order to ensure maximum disclosure and minimum exemption. He referred to the long title of the RTI Act in this connection and submitted that

preservation of paramountcy of the democratic ideal being the main intention of the legislature while enacting it, furnishing information as sought for by a citizen is the relevant factor which cannot be left to the mercy of the public authority. The statute ought to be interpreted in a manner which should lean in favour of the desire of the citizen and not in favour of the authority that may face difficulties and inconveniences since the same cannot stand in the way of disseminating information.

Next, he referred to the definition of 'information' in the RTI Act and contended that it has both an exhaustive aspect and an inclusive aspect. He stressed on the words 'any material in any form' appearing in Section 2(f) to contend that it points to an exhaustive definition denoting all types of information in all forms and that having regard to its pervasiveness, answer scripts would fall within its ambit. While referring to the inclusive aspect of the definition, he contended that a 'paper' or a 'record' would also constitute information and that 'record' as defined in Section 2(i) includes a manuscript. According to him, an answer script is a 'paper' and a hand-written document, i.e. a manuscript and, therefore, would directly be embraced by the definition 'information' in Section 2(f).

On the right of an examinee to claim inspection of his answer scripts, he contended that one has a right to obtain information subject to the provisions of the RTI Act. Information that is accessible under the RTI Act and held by or under the control of any public authority would include the right to inspect the work, documents and records and taking notes or extracts therefrom. According

to him, access to that information only which is forbidden under Section 8 of the RTI Act may not be had by a citizen seeking information. However, the right to inspect answer script is not included in the exemption list provided by Section 8 and, therefore, an examinee cannot be deprived of such right to have inspection and to take notes therefrom.

The decision in Paritosh Bhupesh Kumarsheth (supra) was sought to be distinguished by him by contending that the said decision was delivered while construing a particular regulation of the Maharashtra Secondary Education Board which expressly prohibited inspection of answer scripts by an examinee. He further contended that a special statute having been enacted to meet the changing problems of modern times, interpretation thereof ought to be made in a fresh manner free from the hang over of precedents delivered while considering old enactments. Reference in this connection was made to the decision reported in AIR 1974 SC 1069 : Katikara Chintamani Dora and ors. vs. Guatreddi Annamanaidu and ors.

To counter the argument of Mr. Mitra and Dr. Chakraborty that upholding an examinee's claim to have inspection of his answer scripts would amount to opening a floodgate of applications causing serious problem and prejudice to the public authority, he contended that such an argument is one of desperation and that only because there is a possibility of opening the floodgates for litigation, a mandatory right of a citizen cannot be permitted to be taken away. Reference in this connection was made to the decision reported in AIR 2007 SC 1706: Coal India Ltd. vs. Saroj Kumar Mishra.

Answering the argument of Mr. Mitra that information as defined in Section 2(f) of the RTI Act is confined to those mentioned in Section 4 thereof and, therefore, only those information mentioned in Section 4 would be open for being furnished to a citizen on request, he contended that Section 4 does not provide the exhaustive list of matters in respect whereof right to information can be exercised. According to him, Section 4 is the exhaustive procedure for attainment of the right to information guaranteed by Section 3. In this connection he referred to the decision reported in AIR 2007 Kerala 225 : Canara Bank vs. Central Information Commission, Delhi to urge that the contention of Mr. Mitra ought not to be accepted.

He also contended that having regard to all the provisions of the RTI Act and in particular Section 18 thereof, the right to have an inspection of the answer scripts on merits is also conceived by the RTI Act and in an appropriate case the word 'examination' in Section 18(3) would include having the document, i.e. the answer script, examined by a competent expert.

Reference was also made to Section 18(4) of the RTI Act to contend that the Central Information Commission or the State Information Commission has the right to examine any record which is under the control of a public authority and the same cannot be withheld on any ground.

He, accordingly, prayed for dismissal of the writ appeal.

Mr. R.N. Chakravarty, learned counsel for the Information Commission supported the claim of the examinees and submitted that they are entitled to relief , as prayed.

In reply, Mr. Mitra while referring to the decisions relied on by his adversary Mr. Mitra conceded that the concept of “right to information” is recognized to be embedded in and/or is a corollary to the fundamental right of “freedom of speech and expression” as guaranteed under Article 19(1)(a) of the Constitution of India; however, the RTI Act has streamlined and harmonized the various conflicting interests arising out of such right and the provisions thereof have only set down the modalities and procedure through which such right could be exercised by the public at large in public interest. It basically adds nothing new to the well recognized right of information fostered under the aforesaid judgments of the Hon’ble Apex Court of the country from time to time. According to him, while conducting public examinations, the WBBSE is obliged to bear in mind two primary objects of public interest, viz. (i) holding of examinations annually without any delay and (ii) finality of such examinations. If the examinees are allowed access to the answer scripts written by them by way of inspection or otherwise in terms of the RTI Act which would not serve any public interest, the WBBSE would be failing in its duty to achieve the interest of a vast majority of the society and, therefore, to harmonize and/or balance the conflicting interests, the private interest of an individual must yield to the larger public interest or else the entire system would come to a grinding halt.

He contended that the WBBSE owes no public duty to grant inspection of scripts to the examinees by allowing access thereto. He reiterated that while definition of the word ‘information’ under the RTI Act is very wide, ‘right to information’ is narrowed down having regard to the provisions of the RTI Act and

information of the nature mentioned in Section 4 of the RTI Act is only accessible. Accordingly, the Court may hold that answer scripts written by examinees are private documents not within public domain and, therefore, examinees taking public examinations are not entitled to have access thereto having regard to the provisions of the RTI Act.

We have heard learned counsel for the respective parties. Two questions arise for a decision on the writ appeal and the writ petitions, and they are:

- (i) Whether answer scripts written by an examinee in course of a public examination is comprehended within the definition of 'information' under the RTI Act?
- (ii) If the answer to the first question is in the affirmative, whether an examinee is entitled to have access thereto? In other words, whether access thereto can be withheld by the public authority on any valid ground traceable in the RTI Act?

The learned Judge while deciding the writ petition of Pritam answered the first issue *supra* in the affirmative. His Lordship also ruled that the public authority, i.e. the University in terms of the provisions of the RTI Act, is not entitled to debar an examinee's access to the answer scripts.

We have perused the well-written, well considered and comprehensive judgment and order of the learned Judge on the writ petition of Pritam and find ourselves in complete agreement with the view taken by His Lordship except on one aspect to which we shall advert later. For such view, we propose to give the following few reasons.

It would be worthwhile to travel down memory lane and notice the authoritative pronouncements of the Apex Court, starting from the decision in Raj Narain (supra), on the scope and ambit of Article 19(1)(a) of the Constitution and ruling that right of information is part of the fundamental right guaranteed thereby. In Raj Narain (supra), the Constitution Bench of the Apex Court considered the question as to whether privilege could be claimed by the Government of Uttar Pradesh under Section 123 of the Evidence Act in respect of what has been described for the sake of brevity to be the Blue Book summoned from it and certain documents summoned from the Superintendent of Police, Rae Bareli, Uttar Pradesh. Therein, it was held as follows:

*“In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. **The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing.** The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security, see New York Times Co. vs. United States, (1971) 29 Law Ed. 822 =403 U.S. 713. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption:*

To justify a privilege, secrecy must be indispensable to induce freedom of official communication or efficiency in the transaction of official business and it must be further a secrecy which has remained or would have remained inviolable but for the compulsory disclosure. In how many transactions of official business is there ordinarily such a secrecy? If there arises at any time a genuine instance of such otherwise inviolate secrecy, let the necessity of maintaining it be determined on its merits (see ‘Wigmore on Evidence’, 3rd ed : Vol 8, P 790).”

(emphasis supplied by us)

In S.P. Gupta (supra), the Apex Court had the occasion to observe as follows:

“64. Now it is obvious from the Constitution that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its credal faith, it is elementary that the citizens ought to know what their Government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only if people know how Government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy. ‘Knowledge’ said James Madison, ‘will for ever govern ignorance and a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular Government without popular information or the means of obtaining it, is but a prologue to a force or tragedy or perhaps both’. The citizens’ right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the Government is increasingly growing in different parts of the world.

65. The demand for openness in the Government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rulers and, once the vote is cast, then retiring in passivity and not taking any interest in the Government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the Government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of Government — an attitude and habit of mind. But this important role people can fulfil in a democracy only if it is an open Government where there is full access to information in regard to the functioning of the Government.

*66. ****The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). **Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands.** The approach of the court*

must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest.

*******.

(emphasis supplied by us)

In Secy., Ministry of Information & Broadcasting, Govt. of India (supra), the Apex Court while considering the several points of law formulated and mentioned in paragraph 2 of its decision ruled as follows:

“43. We may now summarise the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2). The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press. The freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to communicate or circulate one’s opinion without interference to as large a population in the country, as well as abroad, as is possible to reach.

44. This fundamental right can be limited only by reasonable restrictions under a law made for the purposes mentioned in Article 19(2) of the Constitution.

45. The burden is on the authority to justify the restrictions. Public order is not the same thing as public safety and hence no restrictions can be placed on the right to freedom of speech and expression on the ground that public safety is endangered. Unlike in the American Constitution, limitations on fundamental rights are specifically spelt out under Article 19(2) of our Constitution. Hence no restrictions can be placed on the right to freedom of speech and expression on grounds other than those specified under Article 19(2).”

In Assn. for Democratic Reforms (supra), the Apex Court was, inter alia, seized of the issue as to whether before casting votes, the voters have a right to

know relevant particulars of the candidates contesting the elections. While deciding the issue, the Apex Court held as follows:

“30. Now we would refer to various decisions of this Court dealing with citizens’ right to know, which is derived from the concept of ‘freedom of speech and expression’. The people of the country have a right to know every public act, everything that is done in a public way by the public functionaries. MPs or MLAs are undoubtedly public functionaries. Public education is essential for functioning of the process of popular government and to assist the discovery of truth and strengthening the capacity of an individual in participating in the decision-making process. The decision-making process of a voter would include his right to know about public functionaries who are required to be elected by him.

46. To sum up the legal and constitutional position which emerges from the aforesaid discussion, it can be stated that:

5. The right to get information in democracy is recognised all throughout and it is a natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, which is as under:

‘(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.’

6. On cumulative reading of a plethora of decisions of this Court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this Court would have ample jurisdiction under Article 32 read with Articles 141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest.

*7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter’s speech or expression in case of election would include casting of votes, that is to say, **voter speaks out or expresses by casting vote**. For this purpose, information about the candidate to be selected is a must. Voter’s (little man — citizen’s) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. **The little man may think over before making his choice of electing law-breakers as law-makers.***

(emphasis in original)

In People's Union for Civil Liberties (supra), the Apex Court was considering as to how far and to what extent the right of information, which is a fundamental right under Article 19(1)(a) of the Constitution, and the State's power to impose reasonable restrictions under Article 19(2) thereof is to be balanced. While deciding the question, the Apex Court had the occasion to consider its previous decisions in Raj Narain (supra), Indian Express Newspapers (supra), Secy., Ministry of Information and Broadcasting (supra), Association for Democratic Reforms (supra), Dinesh Trivedi, M.P. vs. Union of India reported in (1997) 4 SCC 306 and a host of other decisions. Ultimately, it ruled as follows:

"45. Right of information is a facet of the freedom of 'speech and expression' as contained in Article 19(1)(a) of the Constitution of India. Right of information, thus, indisputably is a fundamental right.

53. In Dinesh Trivedi this Court held: (SCC p. 314, paras 18-19)


"18. The case of S.P. Gupta v. Union of India decided by a seven-Judge Constitution Bench of this Court, is generally considered as having broken new ground and having added a fresh, liberal dimension to the need for increased disclosure in matters relating to public affairs. In that case, the consensus that emerged amongst the judges was that in regard to the functioning of Government, disclosure of information must be the ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest. The Court held that the disclosure of documents relating to the affairs of State involves two competing dimensions of public interest, namely, the right of the citizen to obtain disclosure of information, which competes with the right of the State to protect the information relating to its crucial affairs. It was further held that, in deciding whether or not to disclose the contents of a particular document, a judge must balance the competing interests and make his final decision depending upon the particular facts involved in each individual case. It is important to note that it was conceded that there are certain classes of documents which are necessarily required to be protected e.g. Cabinet minutes, documents concerning the national safety, documents which affect diplomatic relations or relate to some State secrets of the highest importance, and the like in respect of which the Court would ordinarily uphold Government's claim of

privilege. However, even these documents have to be tested against the basic guiding principle which is that **wherever it is clearly contrary to the public interest for a document to be disclosed, then it is in law immune from disclosure.** (paras 73 and 74 at pp. 284-86)

19. What then is the test? To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realise that undue popular pressure brought to bear on decision-makers in Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest."

(emphasis in original)

58. Every right — legal or moral — carries with it a corresponding obligation. It is subject to several exemptions/exceptions indicated in broad terms. Generally, the exemptions/exceptions under those laws entitle the Government to withhold information relating to the following matters:

- (i) International relations.
- (ii) National security (including defence) and public safety.
- (iii) Investigation, detection and prevention of crime.
- (iv) Internal deliberations of the Government.
- (v) Information received in confidence from a source outside the Government.
- (vi) Information, which, if disclosed, would violate the privacy of the individual.
- (vii) Information of an economic nature (including trade secrets) which, if disclosed, would confer an unfair advantage on some person or  concern, or, subject some person or Government to an unfair disadvantage.

(viii) Information which is subject to a claim of legal professional privilege, e.g., communication between a legal adviser and the client; between a physician and the patient.

(ix) Information about scientific discoveries.”

Authorities are therefore in abundance holding that right to receive information or the right of being informed is implicit in Article 19(1)(a) of the Constitution subject only to reasonable restrictions permitted to be imposed by Article 19(2) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

The Parliament had enacted the Freedom of Information Act, 2002. However, it was considered weak and to ensure greater and more effective access to information, the need was felt to make it more progressive, participatory and meaningful. Accordingly, it was decided to repeal the 2002 Act and legislation was proposed to provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution. It was thereafter that the RTI Act came on the statute book.

The RTI Act has been enacted by the Parliament, while repealing the 2002 Act, for setting out the practical regime of right to information with a view to creating environment of transparency and sharing of information and provide every Indian citizen the basic constitutional and democratic right to gain access to certain information that may be held by public authorities. It primarily seeks to encourage and enhance transparency and accountability while intending to

curb corruption. It is well known that corruption thrives on secrecy. Transparency may lead to its eradication and right to information, in its undiluted form, would be an essential tool to prevent corruption. The long title of the RTI Act emphasizes the need for transparency and accountability in the working of every public authority to keep the citizenry informed and to make the Government and their instrumentalities accountable to the governed. While transparent governance is essential to restore accountability and increase efficiency, accountability of the governors to the governed is an essential feature of good governance. It, however, needs to be borne in mind that while all confidential information pertaining to efficient and smooth functioning of the Government and matters of national security cannot be divulged to the masses, the RTI Act seeks to identify and classify such information that may be made readily available to the public and to which the average Indian citizen has a right to ready access in order to preserve the true worth of the country's democratic ideals.

Viewed in the context of the dispute raised before us, applicability of the RTI Act has to be tested.

Insofar as the first issue is concerned, we have little hesitation in holding that an assessed/evaluated answer script of an examinee writing a public examination conducted by public bodies like the WBBSE, the CBSE or the Universities, which are created by statutes, does come within the purview of 'information' as defined in the RTI Act. There is no justifiable reason to construe Section 2(f) of the RTI Act in a constricted sense. Apart from it being a material

and thus comprehended within the exhaustive aspect of the definition, an assessed/evaluated answer script is also a document, a paper, and a record. Also, an opinion is comprehended within the definition of 'information'. How it would be relevant for a decision on the proceedings at hand would be discussed at an appropriate stage.

We would now turn our attention to the second issue. There can be no doubt that education is one of the great sources of empowerment, if not the greatest. It is man's thirst for knowledge that a concerted effort to acquire it is noticeable in all spheres of work. School, colleges and universities are centres of advancement of learning. The knowledge a student acquires while he is taught in school, college or university is the foundation for making him equipped in his struggle for survival in this competitive world. Inroads that he makes in unknown territory are based on his conviction acquired from knowledge. Acquisition of knowledge at a particular level in the present system of schooling has to be reflected in answers written by the student while taking public examination. Fair and proper evaluation/assessment of the answers written by the student by the examiners entrusted by the examining body would largely shape his career. Nowadays, unless one is a topper or a ranker, the gates for acquiring more knowledge or securing opportunity to serve would close on him without much ado. The importance of fair and proper evaluation/assessment can, therefore, never be undermined as and when the student makes a forward leap each time he is successful in clearing one public examination after another. The WBBSE, the CBSE and the University are institutions of governance. Can such authorities

claim immunity if students, who they govern, ask them to divulge information by giving access to the assessed/examined answer scripts for ensuring transparent governance and thereby an assurance of fair, just and proper treatment?

First, the issue raised by Mr. Mitra that only those information enumerated in Section 4 is required to be published and, therefore, no other information is required to be furnished by a public authority may be considered. In Canara Bank (supra), a contention similar to the one raised by Mr. Mitra was raised. A complete reply to the aforesaid contention is furnished in paragraph 5 of the decision given by the learned Judge. Paragraph 5 thereof to the extent relevant herein is quoted below:

“ *****

*From a reading of those three sections together, I have no doubt in my mind that the information mentioned in Section 3 is not circumscribed by Section 4 at all. Section 4 only lays down certain obligations the public authorities are required to perform in addition to the duty to furnish information to *****citizen when requested for. These obligations are to be compulsorily performed apart from the other liability on the part of the public authority to supply information available with them as defined under the RTI Act subject of course to the exceptions laid down in the RTI Act. The information detailed in Section 4 has to be compulsorily published by the public authority on its own without any request from anybody. Further, there is no indication anywhere in the RTI Act to the effect that the ‘information’ as defined in section 2(f) is confined to those mentioned in Section 4 of the RTI Act. Therefore, I am unable to hold that only information mentioned in Section 4 need be supplied to citizens on request. Hence, I do not find any merit in the contentions of the petitioner in the regard.”*

We are in entire agreement with the learned Judge that the RTI Act does not contemplate that information as defined in Section 2(f) is confined to those mentioned in Section 4 of the RTI Act and information other than those encompassed by Section 4 need not be furnished to a citizen on request.

Having regard to the provisions of sub-sections (2) to (4) of Section 4 of the RTI Act, we are of the firm view that the mandate of sub-section (1) including its various clauses is relatable to the functioning of the public authority in general for discharging its public duties, information in respect whereof ought to be disseminated suo motu as far as practicable and possible within the resources of such authority for facilitating its access to the public. Section 8(1) of the RTI Act provides an exhaustive exemption list and Section 4 thereof cannot be construed to be an additional provision indirectly empowering public authorities to claim exemption from disclosing information to an information seeker. The argument advanced lacks substance and thus is rejected.

The next contention of Mr. Mitra that inspection of answer scripts by an examinee is contrary to the provisions of Regulation 14(4) of the said Regulations which debars inspection of answer scripts by an examinee is now taken up for consideration.

Section 22 of the RTI Act lays down that provisions of the RTI Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. In view of the overriding effect of the RTI Act, a subordinate legislation framed by the WBBSE that clearly is inconsistent with the spirit of the RTI Act cannot whittle down and/or negate a right flowing from it. In view of the provisions of the RTI Act having overriding effect, an examinee is not required to challenge the validity of the said Regulations. The said Regulations, insofar it denies inspection of an

answer script, being clearly inconsistent with the provisions of the RTI Act have to be read down to save it from the charge of being ultra vires the provisions thereof.

The further argument advanced by Mr. Mitra, as noticed above, that answer scripts written by examinees taking a public examination are not within public domain and would not serve any public interest have failed to impress us.

We have no doubt in our mind that each and every step in a process of examination conducted by the University, the WBBSE and the CBSE are in public domain. In terms of rules/regulations framed by them, answer scripts, either written or not written, cannot be taken out of the examination hall by an examinee. Once the process of writing the examination is over and the answer script is handed over by an examinee to the invigilator for onward transmission thereof to the examiner for assessment/evaluation, the answer scripts become the property of the public authority and information in respect thereof, if sought for, cannot be denied on the specious ground that the examinee having answered the questions he knows better than anyone else what has been written on the answer scripts and, therefore, seeking of information in respect thereof would not be within the public domain. Public law element is omni-present in all stages of the process and access to answer scripts thus cannot be denied on the ground as urged.

The University sought to contend before the learned Judge that an answer written by an examinee on the answer script is not information and, therefore, he has no right to claim access to his answer script since it does not amount to a

request seeking information that is accessible under the RTI Act. The contention is misconceived as has rightly been held by the learned Judge. According to His Lordship, *“in the broader perspective, if a document submitted takes on any marking it becomes a new document”* and that *“notwithstanding the principle of severability contained in Section 10 of the said Act, the answered paper with or without examiners’ etchings thereon is not information exempted any of the limbs of Section 8”*.

We share the same view. It is quite common on the part of some of the examiners while assessing the merits of answers written by examinees taking a public examination to indicate in the margin deficiency in the answers or redundancy of material comprising the answer. Endorsement in the answer scripts may also reveal what the examiner expected of the examinee and how such expectation not having been fulfilled led to the marks that have actually been awarded. These, in our considered view, are opinions expressed by the examiners while assessing or evaluating an answer script. The provision in Section 2 (f) would contemplate an opinion to be part and parcel of ‘information’ and the right to have such ‘information’, if not expressly barred by Section 8 of the RTI Act, would definitely be accessible to a citizen seeking access thereto. As has been held by the learned Judge, a look at the evaluated answer scripts could serve the noble purpose of being acquainted with the mistake committed or getting a clarification of the doubts one may have on getting to know that he has not been awarded marks true to his expectation.

Quite apart, there is no merit in the submission that giving the examinees

access to their answer scripts would not serve any public interest. Disclosure of assessed/evaluated answer scripts would definitely be conducive to improvement of quality of assessment/evaluation. Examiners appointed by the WBBSE or the University are not their employees. They are beyond the disciplinary control of the public authorities. If there be any incident warranting penal action, it is open to the public authority not to engage the errant examiner again but their accountability to the respective public body in case of improper or unfair or negligent marking or provision for disciplining them has not been shown. The examiners while assessing scripts are in the position of the judges of the merits of the answers written. There is, however, limited scope of judging their performance. Without demeaning the examiners at all, it may be observed that if an examiner's action is made the subject of public scrutiny it might ensure assessments that are fairer, more reasonable, and absolutely free from arbitrariness and defects. Every person discharging public functions must be accountable to the people and there is no reason as to why the examiners who also discharge public duty should not be made so accountable. This would indeed be a big step towards making all concerned associated with the examination process accountable to the examinees as well as the public authority.

There is also another significant aspect that needs to be noticed. As soon as information becomes accessible an informed decision could be made by a potential litigant, initially dissatisfied with the marks awarded to him, before he takes a plunge to legal recourse. The time, money and effort which are

necessarily associated with litigations could be lessened/avoided once greater transparency is assured. Similarly, greater transparency would mean correct, timely and legally sound decisions on the part of the public authorities and its functionaries and thereby the quality of governance, most likely, would improve.

Submissions made by Mr. Mitra that since regulations framed by the University and the WBBSE entitle an examinee to ask for review/reassessment and/or scrutiny of his answer scripts access thereto under the RTI Act would not serve any fruitful purpose is again without merit. It is common knowledge that while the entire answer script is reevaluated on merits in case of review, scrutiny is limited only to ascertain whether marks have been awarded for each question answered and whether there is any totaling error or not. However, in terms of Regulation 14(2) of the said Regulations, review/re-examination cannot be asked for by an examinee successful in the examination. However, they are entitled only to apply for scrutiny. Even if there be apparent error in assessment that cannot be rectified on scrutiny in terms of the said Regulations, an examinee would not have any remedy and is likely to suffer for the rest of his life. In terms of regulations of the University, whether one be a successful or unsuccessful candidate, he cannot apply for review/re-examination of all individual papers but it is generally confined to two of the papers of the examinee's choice. Scrutiny is barred where review/re-examination is permissible. Ordinarily, an examinee seeks review of answer scripts pertaining to those papers where marks awarded are low and not to his satisfaction. The purpose of allowing review at times is frustrated because the examinee is unaware as to which of the papers he should

apply for review. If access to each and every answer scripts is given to an examinee, that would only effectuate the right to apply for review and render it purposeful. Take the instance of an examinee who according to his estimation of the merits of the answers written by him expects at least 80 % marks in all papers but on being furnished the mark sheet finds that he has secured marks as per his expectation in all but two papers in which he has been awarded 50% marks. Without having access to the answer scripts, the normal reaction would be to apply for review of those scripts in which he has been awarded 50% marks. On revaluation there may or may not be any change. However, in the process, the scripts on which he has been awarded 80% or more marks go unnoticed and even if there be any error in marking a question answered or error in totaling, the examinee would have to bear its consequence for the rest of his life. If all the answer scripts are made open to inspection and an error in a paper on which he has been awarded 80% marks is detected without detection of any error in the papers in which he has been awarded 50% marks, he would definitely have the option of applying for review of even a script on which he has been awarded 80% marks or more. These are the practical difficulties which one can be overcome if applicability of the RTI Act to answer scripts of public examinations is recognised for assuring fairness and transparency. Disclosure, therefore, would very much be in public interest.

We may notice at this stage certain decisions of the Apex Court as also of this Court while an examinee approached the Court feeling aggrieved by the marks awarded in his favour by the concerned examiner.

In *Arun D. Desai vs. High Court of Bombay* reported in 1984 (Supp) SCC 372, the examinee had challenged the result of his second LL.B. Examination on the ground that it is 'defective, arbitrary and partial'. The Apex Court held that there was no substance in his petition. It was not shown by him how the assessment of his answer books was defective, arbitrary or partial. The Court proceeded to observe that students who fail in their examinations are generally prone to make such allegation to explain their failure and to console themselves with the thought that not they, but the examiners who are to be blamed.

In *West Bengal Board of Examination for Admission to Engineering, Medical and Technological Degree Colleges and others vs. Dr. Jitendra Lal Banerjee & ors.*, reported in AIR 1984 Cal 52, it was observed in paragraph 18 as follows:

"In our opinion, there is much substance in the above contentions of the appellants. A writ petitioner is required to give all particulars and the basis of the allegations in support of the prayer for the issuance of the Rule. A mere allegation without any material in support of the same will not entitle a writ petitioner to ask for any assistance from this Court, for, otherwise, any unsuccessful candidate in any examination may file a writ petition alleging that the answer scripts have not been properly assessed by the examiners or that grace marks have been given to a selected few or that the constitution of the body or authority conducting the examination is illegal and invalid without disclosing any basis for such allegations. On such vague allegations unsupported by any material, the Court will refuse to entertain a writ petition."

In *Secy., W.B. Council of Higher Secondary Education vs. Ayan Das* reported in (2007) 8 SCC 242, the Apex Court ruled as follows:

"The courts normally should not direct the production of answer scripts to be inspected by the writ petitioners unless a case is made out to show that either some question has not been evaluated or that the evaluation has been

done contrary to the norms fixed by the examining body. For example, in certain cases examining body can provide model answers to the questions. In such cases the examinees satisfy the court that model answer is different from what has been adopted by the Board, then only can the court ask for the production of answer scripts to allow inspection of the answer scripts by the examinee.”

It is understandable that the allegations made in the respective petitions by the examinees alleging that either there was defective, arbitrary and partial assessment or that answers written by them had not been examined properly consistent with the norms fixed by the examining body were not substantiated before the Court by placing relevant materials leading the Court to decline relief to such examinees. In the event by dint of the regulations framed by the examining bodies the examinees are deprived of the opportunity to have inspection of their scripts, it would be impossible for them to project before the Court the defects, the arbitrariness or the partiality in evaluation of scripts by the examiner, if any, and, therefore, access to justice which has been held to be a human right by the Apex Court in its decision reported in (2007) 6 SCC 120 : Arunima Baruah vs. Union of India & ors. would be entirely frustrated. For the reasons aforesaid, there is no reason as to why the provisions of the RTI Act should not be interpreted in a manner which would lean towards dissemination of information rather than withholding the same so as to provide scope to the examinees to place materials before the Court in support of allegations made in their petitions to avoid in limine dismissal.

The final contention raised by Mr. Mitra that a statute should be read in a manner that it does not produce absurd results and lead to palpable injustice is

now taken up for consideration. None can possibly dispute the principles of interpretation of statutes called in aid in the decisions of the Apex Court relied on by him. The Courts have been reminded to ascertain the intention of the legislature and then strive to promote and advance the object and purpose of the enactment.

It is well recognised that while the letter of the law is the body, the sense and reason of the law is the soul and that it is not the words of the law but the spirit and eternal sense of it that makes the law meaningful. While one can appreciate the contention of Mr. Mitra that an Act of Parliament cannot be construed to reduce it to rank absurdity, it is equally true that such meaning has to be given to the law as will carry out its object. Amplification of people's right to claim disclosure of information from a public authority and its corresponding obligation to respond and disclose information sans some which are exempt to make it more accountable are the pillars on which the RTI Act is structured to effectuate transparent governance. What Parliament in its wisdom thought it proper to introduce, the public authorities are up in arms and asking us to undo. When an exemption list has been provided by the Parliament as in Section 8(1) of the RTI Act, it is not open to anyone except the Parliament to enlarge or abridge such list. So long the statute remains as it is now, it has to be given full effect. Here we are concerned with conflicting view-points, one is that of the public authorities that applicability and operation of the RTI Act would render the system unworkable and the other of the information seekers to gain access to the answer scripts by reason of the right conferred by it. It is in these circumstances

that the statute ought to be construed *ut res magis valeat quam perat* by the Court. We completely agree with the view expressed in *Nokes vs Doncaster Amalgamated Collieries Ltd.* reported in [1940] A.C. to the effect that if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, a construction which would reduce the legislation to futility should be avoided and the bolder construction ought to be accepted based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

We are of the clear view that construing the provisions of the RTI Act, not in tune with the interests of the information seekers in the present case, would render a beneficial statute ineffective. The Court has to adopt that interpretation which is just, reasonable and sensible. Allowing the RTI Act to have its full play thereby promoting the idea of good and transparent governance even if results in inconvenience to some and has the possibility of rendering a system in vogue unworkable, the inconvenience or hardship caused thereby has to yield to the larger public interest which is sought to be guaranteed by its operation. While the examining bodies do have the responsibility of completing the examinations on time, they must adapt themselves to the fluctuating needs of society rather than cling on to archaic procedures. This is necessary for instilling confidence in the minds of people whom they govern of being able to deliver according to the necessities of changing life.

All said and done, one cannot lose sight of the Apex Court decision in *Martin Burn Limited vs. Corporation of Calcutta* reported in AIR 1966 SC 529.

Therein, it was observed as follows:

“A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not”.

The said observation has been relied on by the Apex Court in its subsequent decision in Life Insurance Corporation of India vs. Mrs. Asha Ram Chandra Ambekar reported in AIR 1994 SC 2148 while holding that *“it is true that there may be pitiable situations but on that score, the statutory provision cannot be put aside”.*

We are afraid, the distress to which the examining bodies may be put to by reason of acceptance of the arguments of the information seekers and negation of their arguments must continue till such time the Parliament in its wisdom comes to their rescue.

It would appear from the judgment and order under appeal before us that the University had heavily relied on a decision of the Central Information Commission (hereafter the CIC) dated 24.04.2007 while considering a similar issue. Considering that public examination conducted by institutions have an establishment section as fool-proof as that can be and their own rules prohibiting disclosure of assessed answer scripts or where such disclosure would result in rendering the system unworkable in practice, the CIC had held that *“a citizen cannot seek disclosure of the evaluated answer sheets under the RTI Act, 2005.”* It was so held on the basis of rationale followed by the Apex Court in Paritosh Bhupesh Kumarsheth (supra) and D. Suvankar (supra). The WBBSE in its petitions though annexed the said order of the CIC, Mr Mitra did not refer to it all

in course of his argument. Dr. Chakraborty also did not persuade us to upset the judgment and order under appeal based on the reasoning given by the CIC. But the CBSE in its written notes of argument sought to justify the impugned order passed by it based on the aforesaid order of the CIC.

The CIC in the said order did not hold that an assessed/evaluated answer script would not be information within the meaning of the RTI Act. It did not hold that disclosure of the answer scripts of public examinations conducted by the competent examining bodies are exempt in view of any of the clauses mentioned in Section 8(1) of the RTI Act or the other provisions contained in the other sub-sections of Section 8 thereof. The reason cited by it for not allowing access seems to be that the public authorities in question, viz. the examining bodies have their own in-house procedure to check defects and/or anomalies in assessment/evaluation of answer scripts, they have rules/regulations prohibiting access of examinees to such scripts and that access if allowed would stall the process of finality attached to public examinations. The decisions of the Apex Court referred to in the preceding paragraph also distinctly appear to have weighed in the mind of the CIC in returning the finding it did.

We, however, do not feel persuaded to agree with the reasoning given by the CIC. Once it is accepted that an answer script pertaining to a public examination, duly assessed/evaluated, is information within the meaning of the RTI Act, accessibility thereof can be denied to the information seeker only on grounds traceable in the RTI Act and not otherwise. It is not the claim of the examining bodies that in the process of assessment/evaluation of answer scripts

of the nature before us, there is no manual work and everything is computerized. Howsoever fool proof the in-house procedure as claimed by the examining bodies might be, that cannot be a guarantee simply because 'to err is human'. Rules/regulations framed by such bodies denying access can hardly be called in aid in view of the overriding and pervasive character of the RTI Act. Inconvenience or unworkability, unfortunately, are not recognized grounds on which refusal could be based. It is preposterous to assume that Parliament was not aware of the ground reality while enacting the RTI Act. That apart, the CIC seems to have proceeded oblivious of the settled law that a decision is an authority for what it decides and not what can logically be deduced therefrom. The Apex Court in its decision reported in AIR 2002 SC 834 : The State Financial Corporation and ano. vs. M/s. Jagdamba Oil Mills and ano. has cautioned that disposal of cases by blindly relying on a decision is not proper and that reliance on decisions ought not to be placed without discussing as to how the factual situation at hand fits in with the factual situation of the decision on which reliance is placed. The decision in Paritosh Bhupesh Kumarsheth (supra) is pre-RTI Act, having been delivered more than two decades before its enactment. Thus applicability of the law laid down therein in respect of a claim arising out of the RTI Act seems inapposite. Although D. Suvankar (supra) is a post-RTI Act decision, the Apex Court did not have the occasion to consider the issue posed before it in the light of the RTI Act. The rationale behind the said decisions, howsoever justified and logical they might be on the factual situation before the Courts, therefore could not have been applied by the CIC in passing the order

dated 24.4.2007.

We find from the judgment rendered on the writ petition of Pritam that the order of the CIC was examined threadbare by the learned Judge and we have no hesitation in endorsing the view expressed therein to reject the contentions advanced on behalf of the CBSE based on such order.

We, however, consider the CIC to be perfectly justified in recommending to the examining bodies furnishing of assessed/evaluated answer scripts to the examinees upon publication of results so as to obviate any apprehension in their minds of unfair or arbitrary marking of the answers written by them. We hope and trust that the day is not far away when the WBBSE, the CBSE and the University shall accept such recommendation.

On a wholesome appreciation of the submissions advanced on behalf of the public authorities, there appears to be a frantic attempt on their part to shield the examiners. But should errant examiners be protected? The CBSE has even cited clause (e) of Section 8(1) as a ground for not allowing inspection of an answer script to any examinee. While we shall deal with this aspect a little latter, we find that the learned Judge has taken pains to consider the understandable attempt of the University to keep the identity of the concerned examiner secret and has suggested a procedure which we find is entirely workable and a complete answer to the apprehension expressed by the examining bodies. There is absolutely no reason to take a different view.

The plea of fiduciary relationship, advanced by the CBSE has not impressed us. Fiduciary relationship is not to be equated with privacy and

confidentiality. It is one where a party stands in a relationship of trust to another party and is generally obliged to protect the interest of the other party. While entrusting an examiner with the work of assessment/evaluation of an answer script there is no agreement between the examiner and the public authority that the work performed by the examiner shall be kept close to the chest of the public authority and shall be immune from scrutiny/inspection by anyone. At least nothing in this respect has been placed before us. Since the RTI Act has been enacted to promote transparency and accountability in the working of every public authority and for containing corruption, even if there be such a clause in the agreement between the examiner and the public authority the same would be contrary to public policy and thus void. We have no hesitation to hold that even if there be any agreement between the public authority and the examiner that the assessment/evaluation made by the latter would be withheld on the ground that it is confidential and an assurance is given in this respect, the same cannot be used as a shield to counter a request from an examinee to have access to his assessed/evaluated answer scripts and the RTI Act would obviously override such assurance. Having regard to our understanding of the meaning of the word 'fiduciary', there is little scope to hold that the etchings/markings made on answer scripts by an examiner are held in trust by the public authority immune from disclosure under the RTI Act. We find no force in the contention which, accordingly, stands overruled.

The contention advanced on behalf of the public authorities in relation to opening of floodgates has been ably countered by Mr. Chatterjee by reying on the

decision in Coal India Limited (supra) where the Apex Court while negating the contention of the appellant that if the impugned judgment is upheld a floodgate of litigation would ensue had the occasion to observe as follows:

“23. The floodgate argument also does not appeal to us. The same appears to be an argument of desperation. Only because, there is a possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This Court is bound to determine the respective rights of the parties”.

However, the argument of Mr. Chatterjee that the word ‘examination’ in Section 18 of the RTI Act would include examination of the document by an expert appears to us to be fallacious. ‘Examination’ in Section 18(3)(e) would be limited to examination for ascertaining whether a document is exempt from disclosure or not. We have no hesitation in rejecting the argument.

The submission of Mr. Mitra regarding obligation of the public authorities as mandated by Section 8(3) of the RTI Act, however, has substance. We may observe that the RTI Act which obliges the public authority to retain information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under Section 6 thereof shall be provided to a person, should not be construed in a manner so as to oblige the public authorities to retain the answer scripts for any day in excess of the period mentioned in the relevant regulations for preservation thereof. We hold so being satisfied that preserving answer scripts of lakhs of examinees who take such public examinations conducted by the University, the WBBSE and the CBSE each year for twenty years would work out immense hardship and palpable injustice to them and a meek and mute submission to the

plainness of the language has to be avoided to prevent unworkable and undesirable results.

That takes us to the last point, i.e. the argument advanced by Dr. Chakraborty that the learned Judge while deciding the writ petition of Pritam proceeded on the basis of certain concessions purportedly made by him which were actually not made and, therefore, we should set aside the judgment on this point. We have considered the grounds of appeal and do not find a single ground to this effect. The contention has been raised to be rejected.

A few words before we conclude our discussion on the second issue *supra*. We would not be unjustified in taking judicial notice of the Courts of Writ nowadays being flooded with innumerable cases filed by aggrieved parties - particularly students of schools, colleges, universities and other academic institutions, as also participants of various selection examinations conducted by the appropriate bodies for recruitment to public service alleging wrong, improper or unfair marking and gross negligence in the assessment of their written performances which, according to them, ultimately hamper their academic and career progress substantially. Since marginal difference in marks decides placement of candidates in the merit list, the anxiety of the examinees/candidates can well be appreciated. However, success rate of such petitions is not very high considering the fact that the aggrieved parties often fail to demonstrate before the Court as to how the assessment is defective or arbitrary. Yet, situations are not rare where various Courts have called for production of the answer scripts of aggrieved examinees and detected mistakes,

at times glaring, in assessment of such scripts or non-awarding of marks commensurate with the assessment made. Though the Courts in appropriate cases have passed orders for re-examination and scrutiny which have resulted in the aggrieved party being awarded his dues, it is often seen that the said relief has come at a time when their losses are beyond repair - a valuable year has been lost or an employment opportunity sorely missed in these fiercely competitive times thereby resulting in untold misery and harassment to them.

The RTI Act, therefore, in our considered opinion would act as a buffer to such incidents in future and will help aggrieved parties to get their rightfully deserved relief. It also hopefully will act as a warning for errant examiners and assessors to perform their duties more diligently.

Before parting, we rule that the observation of the learned Judge that the proviso at the foot of clause (j) of Section 8(1) is a proviso to sub-section (1) of Section 8 is not the correct exposition of law and while holding it to be obiter dictum, we would respectfully agree with the decision of the Bombay High Court reported in AIR 2007 Bom 121 : Surupsingh Hrya Naik vs. State of Maharashtra in this regard.

The judgment and order under appeal does not call for interference. The orders impugned in the writ petitions filed by the WBBSE also do not call for any interference. The writ appeal of the University and the writ petitions filed by the WBBSE stand dismissed. The connected writ petition being W.P. No. 208 of 2008 filed by the father of the examinee stands allowed. Inspection shall be granted to the concerned examinees within four weeks from date of receipt of a copy of this

judgment, if not already granted.

The order of the CBSE dated 12.7.2008, impugned in W.P. No.18189 (W) of 2008, is set aside. The writ petition stands allowed within a direction upon the CBSE to grant inspection of the answer scripts to the information seekers/examinees concerned within four weeks from receipt of a copy of this judgment.

Prayer made by the examinees for reevaluation of the scripts, however, stands refused. It shall be open to them seek relief in this behalf in appropriate proceedings, if initiated, after they have access to the assessed/examined answer scripts.

Photostat copy of this judgment, duly countersigned by the Assistant Court Officer, shall be retained with the records of W.P. No. 208 of 2008, W.P. No. 5743 (W) of 2008, W.P. No.5744 (W) of 2008, W.P. No.5302 (W) of 2008 and W.P. No.18189 (W) of 2008.

Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 4 days from date of putting in requisites therefor.

I agree.

(SURINDER SINGH NIJJAR, C.J.)

(DIPANKAR DATTA, J.)

Later :

Prayer for stay of operation of the order has been made by learned Counsel for the University, the WBBSE and the CBSE. Such prayer is considered and refused.

(SURINDER SINGH NIJJAR, C.J.)

(DIPANKAR DATTA, J.)